

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

VOCALSPACE, LLC

Plaintiff,

v.

DANIEL D. LORENZO and
LARKSPARK CORPORATION,

Defendant.

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Civil Action No. 4:09-CV-00350

**DEFENDANT'S RESPONSE TO PLAINTIFFS' EMERGENCY MOTION
TO AMEND SCHEDULING ORDER**

Defendants ask the court not to fully grant Plaintiff's Emergency Motion to Amend Scheduling Order (Docket No. 196).

A. Introduction

1. Plaintiff is Vocalspace, LLC; defendants are Daniel D. Lorenzo and Larkspark Corporation.

2. On January 7, 2011 this court issued an amended scheduling order that set a mediation deadline of February 14, 2011, Joint pretrial order, Motions in Limine, and Jury Instructions deadline of February 21, 2011, Pretrial conference of March 18, 2011, and Trial date of March 21, 2011.

3. On February 17, 2011, Plaintiffs filed a motion to amend the scheduling order to extend the February 21, 2011 deadline, and in the motion the plaintiff argues that part of the issue for the requested delay is the that parties have "not yet been able to mediate the case".

4. The Plaintiff has been ignoring all attempts to mediation this case. Ever since September / October 2010 defendants have been pushing to mediate this case. Defendants have brought at least one motion to compel mediation before this court. This Court has twice set dates for the parties to complete mediation. The plaintiffs have never agreed to a date for mediation, despite the multiple phone calls and emails that have been sent from defendants to plaintiff.

5. Attached as Exhibit A are copies of emails sent from defendants counsel to the plaintiff's counsel. In addition to numerous phone calls, Exhibit A is evidence of emails sent to Plaintiff's counsel on November 11, 2010; November 16, 2010; January 3, 2011; January 5, 2011 (two emails); January 11, 2011; February 7, 2011; February 8, 2011; February 11, 2011 (two emails).

6. Defendants have twice gone to multiple mediators and obtained available dates when the mediators were available. Multiple dates have been suggested to Plaintiff. Undersigned counsel has spoken with Brian Colao (Plaintiff head counsel) numerous times concerning mediation, and each time Mr. Colao has said his client wants to mediate, but in actual fact plaintiff has refused to actually set a date for mediation, suggest a date for mediation, or agree to any of the multiple dates that defendants have suggested for mediation.

7. This court should not delay any deadlines for the perceived issue of the parties not be able to mediate by this time. The failure to mediate has been completely at the hands of the plaintiff, and this Court should order a date for mediation, which will be part of a separate motion.

8. There are three sets of pleadings that have a deadline of February 21, 2011 for

which Plaintiff seeks an extension: Joint pretrial order, Motions in Limine, and Jury Instructions deadline. Attorney for plaintiff called undersigned counsel on February 17, 2011 and sought an extension until March 7, 2011, to which defendants object. When the motion was filed, defendants learned that the Plaintiff's moved the date back to March 4, 2011.

B. Argument

9. Defendants are not opposed to moving the date for the Pretrial order and Jury Instructions to the first week of March 2011. The defendants do object to the deadline for the motions in limine to be moved past February 25, 2011. Defendants counsel is a solo practicing attorney, and has scheduled the two weeks prior to trial which is set for March 21, 2011 to be dedicated solely to trial preparation.

10. Plaintiffs will want to file which will likely be multiple motions in limine on March 4, 2011, which will then required to defendants attorney to spend a considerable amount of time responding to those motions in limine. Defendant needs to have dedicated time prior to trial to focus only on the trial preparation, and the court should not require any responses due of any kind to motions which could be handled sooner.

11. The plaintiff by this stage in litigation should be well aware of motions in limine that need to be filed. There is not reason to delay motions in limine until March 4, 2011. The court should either keep the February 21, 2011 deadline for motions in limine, or grant a few day extension until February 25, 2011 for the motions to limine.

12. The two remaining deadlines for the Joint pretrial order and Jury Instructions can be moved to the first few days of March as there will not be any substantive responses to

those items which will be needed.

C. Conclusion

13. This court should deny the Plaintiff motion to extend the Joint pretrial order, Motions in Limine, and Jury Instructions deadline until March 4, 2011, for the reasons stated in this pleading.

Respectfully submitted,

/s/ Ernest P. Nycz
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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2011 a true and correct copy of the foregoing response to emergency motion to amend scheduling order has been electronically filed on the CM/ECF system, and sent via email to: Neal G. Massand (Attorney for Plaintiff)

/s/ Ernest P. Nycz
ERNEST P. NYCZ